IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1304 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

INDUBHAI LAXMIDAS GANDHI

Versus

SHANKER VIJAY BAHADURSINGH

Appearance:

MR JIVANLAL G SHAH for Petitioners

NOTICE SERVED for Respondent No. 1

MR VN BHAGODIA for Respondent No. 2

MR ST MEHTA APP for Respondent No. 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 31/03/2000

ORAL JUDGEMENT

This application under Section 482 of the Code of

Criminal Procedure prays to quash the process and proceedings in the Criminal Case No.265 of 1991 filed before the Court No.12 of the Metropolitan Magistrate, Ahmedabad.

2. According to the original complaint, the complainant had sold to the present petitioners goods worth Rs.5,49,718.18 against which a payment of Rs.86,500 was made. After this transaction in 1988, a sum of Rs.2,38,000 appears to have remained due, for the collection of which the complainant had approached the petitioners and, thereupon, he was assured that the remaining amount will be paid with interest by the end of the year 1990. Thereafter, in January 1991, the complainant visited the place of the present petitioners and, it is alleged that, he was turned out with threat to his life. Thus, according to the complainant, he was cheated by non-payment of Rs.2,38,000 due and the interest thereon totalling Rs.3,67,834.09. The complainant has, in the statement recorded below his complaint, stated that the petitioners had committed breach of trust by not paying the total amount of Rs.3,67,834.09 due and that the accused had threatened to kill him if he would again approached them for money.

3. The petitioners, the original accused, have stated before this court that the dispute between the parties is purely of a civil nature and no offence punishable under Section 406 or Section 420 of the Indian Penal Code is disclosed in the complaint; that the complaint does not allege that they had induced the complainant to sell the goods or that there was an element of dishonesty on their part. According to the petition, half of the price of the goods sold to the petitioners was paid according to the compliant itself and that there was an account going on between the parties pursuant to the transactions of purchase and sale among them; that 'C' Form required to be submitted by the seller to the purchaser under the law relating to interstate sales tax was not supplied by the complainant and, instead, the complaint was filed for settling the account. Thus, if any amount remained due, filing a civil suit was the proper remedy for resolving the dispute of purely a civil nature. It is further stated that the allegations regarding abuse and threats are absolutely false and made with a view to bring pressure. It appears from the record that, after recording the statement of the complainant, the learned Magistrate had proceeded to straightaway issue warrants for the arrest of the petitioners. In the course of the present proceedings, although the complainant had appeared

through an advocate, no reply or reply-affidavit is filed and when the matter is called for hearing, no one is present on his behalf.

4. Considering the uncontroverted averments of the petition and the contents of the original complaint and the statement recorded under it, it clearly appears that the complainant and the petitioners have entered into a commercial transaction and the dispute has arisen on account of non-payment of some amount claimed to be due. The element of dishonest intention appears to be totally absent in view of the transactions of selling and payment among the parties. Mere fact that an amount was remaining due cannot constitute any offence as alleged. As for the incident alleged to have happened at Bombay in January 1991, the complaint is devoid of any details or specific averments as to when, where or how the incident of threat had happened. On the whole, it appears that no case is made out against the petitioners in the complaint and the complainant has resorted to criminal prosecution for pressurising the petitioners.

5. The learned Metropolitan Magistrate has, without adverting to these aspects and without forming any opinion on the basis of the statement of the complainant, appears to have proceeded to order issue of warrants which was not called for in the facts and circumstances of the case. As it appears that the criminal proceedings are by way of abuse of process of court, the process and proceedings in Criminal Case No.265 of 1991 are hereby quashed and set aside in the interest of justice. Rule is made absolute with no order as to costs.

(KMG Thilake)
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